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Letter dated 7 June 2004 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

Upon instructions from my Government, I have the honour to forward herewith the text of a letter from the President of the Republic of Cyprus, H.E. Mr. Tassos Papadopoulos, dated 7 June 2004 (and its annex) addressed to you, which constitutes our official position on your report on the mission of good offices in Cyprus (S/2004/437) of 28 May 2004 (see annex).

I should be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda item 30, and of the Security Council.

(*Signed*) Andreas D. **Mavroyiannis**

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Annex to the letter dated 7 June 2004 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

REPUBLIC OF CYPRUS

The President

7 June 2004

Excellency,

With reference to your Report on the mission of good offices in Cyprus (S/2004/437), dated 28 May 2004, and further to our recent meeting of 3 June 2004, I would like to convey to you further my relevant position.

This reply is presented in full respect for your action in the framework of your mission of good offices and has been prepared in a constructive and forward looking manner. Indeed, I take this opportunity, to once more, reiterate my gratitude and appreciation for your sustained personal efforts towards a settlement in Cyprus.

When reading this Report, one should, nevertheless, bear in mind that it has been primarily drafted by those entrusted by you with the role of honest broker and were active participants throughout the process. Through this Report they assess effectively the outcome of their own efforts, whilst at the same time attempting to portray and evaluate the attitude of the parties involved. In other words, the authors of the report play essentially the role of the judge and jury of the overall outcome of the negotiation process they presided over.

I welcome, in particular, the recognition, in the Report, that serious concerns of the Greek Cypriot community had not been adequately addressed in the final Plan of 31 March 2004, a fact which weighted heavily on the results of the referendum held on 24 April 2004.

It is regrettable that these concerns, which I had explained in detail, both orally and in writing, in Nicosia, through various documents, numbering more than 200 pages of comprehensive proposals, amongst which one of the most important was the document of 8 March 2004 concerning the crucial issue of security, were to a great extent, ignored.

H.E. Mr. Kofi Annan
Secretary-General
Of the United Nations
New York

Let me remind you that these legitimate concerns refer mainly (a) to the question of Turkish mainland settlers, an issue which I also raised in my two letters I addressed to your Excellency, on 23 and 25 March 2004, without any response; (b) the permanent stationing of Turkish military forces in Cyprus, even after Turkey's eventual accession to the European Union; and (c) the expansion of the guarantor powers' rights emanating from the Treaty of Guarantee, through the inclusion of an additional protocol.

You very rightly point out, in your Report, that there is disagreement over the interpretation of the rights of the Treaty of Guarantee, between the Republic of Cyprus and Turkey. Given that Turkey invaded Cyprus in 1974 by invoking this very specific right, this issue has been of paramount gravity for our side. In order to tackle this issue, we have proposed the adoption of a triggering off mechanism for the exercise of the right of intervention under the Treaty of Guarantee. However, Mr. de Soto refused to discuss the issue and Your Excellency also did not contemplate this possibility. Even after the presentation of the text of the final Plan, Cyprus tried to secure a strong resolution under Chapter VII of the UN Charter and in any event the adoption of a triggering off mechanism. This attempt of ours, as you very well know, was once more, unsuccessful due to the strong opposition of the other side.

Another issue of significance, negatively affecting the negotiating process, which you also include in your Report, was the lack of sufficient time and the tight deadlines provided. These factors did not allow either substantial negotiations to take place, or for an agreed solution to be reached between the two communities.

This is all the more regrettable, since I had been repeatedly advising, after the collapse of the talks, at the Hague, in March 2003, that we should not be faced with another artificial deadline, giving anxiety to the Cypriot people that they would be besieged and that their legitimate concerns were not given appropriate consideration. This flawed negotiating method, which resulted in a ten-month delay in the resumption of the talks, has proved inadequate and counterproductive. We bear witness to the results of such a method, not only in the case of Cyprus, but also in other regional conflicts, leading, at best, to short lived arrangements incapable of bringing about stable and lasting solutions.

May I point out that the crucial period of more than a month of the first phase of negotiations, in Nicosia, as you also point out in your Report, was allowed to elapse without any progress due to the intransigent position and demands of the Turkish Cypriot side, which laid well outside the key parameters of the plan.

Let me underline that there have been serious inaccuracies, as well as wrong assumptions, in your Report, which are pointed out in the attached *Annex*. The most serious of them is the erroneous interpretation of the choice of the Greek Cypriot community at the referendum of April 24, namely that by the disapproval of this specific Plan Greek Cypriots have voted against the reunification of their country.

Such a claim is unfounded and insulting. It should not be forgotten that a substantial number of those voting were refugees, 70 per cent of which voted "no", and who for more than thirty years have been

deprived of their human rights, particularly their rights to return and to property, due to the presence of 35,000 troops and 119,000 illegally implanted Turkish settlers.

Another fallacious assumption of the Report is that the Greek Cypriots are turning away from a solution based on a bi-zonal, bi-communal federation. I would be very interested to look into any credible evidence, put forth in good will, pointing out to even a single reference in our written proposals, submitted in Nicosia and Bürgenstock, which will support this assumption. The same can also be said for our comments submitted orally. Moreover, our firm position taken through all these years of deliberations does not justify in any way the inference of such a claim.

In any event, I take this opportunity to emphatically reiterate, once more, on behalf of the Greek Cypriot side, the commitment of my people, as well as my strong personal one, to the solution of a bi-zonal, bi-communal federation. At the same time, I am compelled to reject the notion that the Plan submitted on 31 March 2004 constitutes the one and only, unique, blueprint of a bi-zonal, bi-communal federation. Does anybody today claim that the previous versions of the Plan, which were similarly presented as unique opportunities for the achievement of a bi-zonal, bi-communal federation, were not so?

Turning to the Section of the Report, outlining the alleged improvements inspired by the Greek Cypriot concerns, I wish to point the following: the allegation that "*the overall amount of property in the Turkish Cypriot State eligible to be reinstated to Greek Cypriots would be roughly doubled as compared with the previous version of the plan*" can be described as inaccurate. As you very well know, the Plan includes a number of preconditions for reinstatement of properties, which limit substantially the exercise of the right of Greek Cypriots to reinstatement, as well as the percentage of properties that were to be reinstated to Greek Cypriots in comparison to previous versions of the Plan.

Furthermore, the section outlining the improvements of the sides bears an uncanny resemblance to a well-known document of a permanent Security Council Member, widely circulated at the time of the Bürgenstock phase of negotiations, which strangely enough even follows the same sequence for the improvements gained by both sides. The most noteworthy element, however, of this section of the Report is the omission of any reference to the benefits that Turkey, and others, accrued from the provisions of the Plan.

Let me just outline just some of the benefits gained by that country under the finalised version of the Plan. Turkey true to her past role demanded (and obtained) divisive bi-zonality provisions, strategic economic benefits, and "security" arrangements, with sufficient troops, even if reduced in numbers, to allow her again to intervene militarily through a bridgehead in Cyprus, a right Turkey still insists she enjoys, and her continuing role make full independence impossible. Although, scarcely touched on in the Plan and then only by reference, Turkey's powers of intervention and supervision, are in reality enormous, because of its continuing military presence in and near Cyprus. She has also insisted, through the Turkish Cypriots, on binding the UCR by treaties which they entered into with her and which provided for the integration of the Turkish Cypriot constituent state into Turkey, persuading the UN to accept this and a new right for the Turkish Cypriot State and Turkey to make agreements on investment and provision of financial assistance. Turkey had also insisted on putting a brake on the

UCR´s economic development by securing provisions in the Law on the Continental Shelf that prevents the UCR from exploring and exploiting her maritime resources in the seas of Cyprus whilst interfering with the Treaty between Egypt and the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone, which is an ill-omen as to how Turkey would in future have operated. Another such example is the imposition of the "Cooperative Agreement on Civil Aviation with Turkey" on Cyprus over the strong objection of the GCs. This treaty would have imposed on Cyprus a common policy with Turkey in civil aviation thus making the condition to changes in the management of Cyprus air space subject to Turkey's consent. It would have also allowed Turkey to take all necessary actions (even military action) in the event of any threat to aircraft passengers, airport or aviation facilities.

In the aforementioned list, which by no means is exhaustive, the greatest benefit for Turkey, secured to the detriment of both Greek and Turkish Cypriots and consisting a clear departure from the provisions of Annan III, has been the stationing of Turkish troops on the island in perpetuity.

All these new provisions clearly serving Turkish interests and aims in Cyprus explain to a large extent why the Plan was overwhelmingly rejected by the Greek Cypriots, approved by the Turkish Cypriot side and so emphatically endorsed by the Turkish Government. The Greek Cypriots have every right to wonder how the United Nations, the very guardian of international law, could adopt proposals inspired by the Turkish side, which deliberately and unjustifiably limit the sovereignty exercised by one of its Member States. In other words, the main objection by the Greek Cypriot community to the Plan was the fact that foreign interests, primarily Turkish ones, were satisfied, instead of those of the Cypriot population, Greek and Turkish Cypriots alike.

Furthermore, the Turkish side avoided conscientiously to reveal its thoughts on the issue of territory, thus depriving the whole process of a significant element of potential meaningful trade-offs. May be the Turkish side adopted this attitude having valid reasons to expect that its demands would be more or less fully satisfied without having to make any concessions on territory. In any event, the insinuation that the GC side avoided somehow to discuss the territorial issue or missed an opportunity as far a Karpas is concerned betrays, at best, failure to understand the nature of GC concerns as expressed during the whole process or bad faith at worse. In any event, this issue should have been dealt with by the United Nations *proprio moto* when the percentage of displaced persons to return to their homes in the area under TC administration was further curtailed by 3 per cent.

We were willing to accept, on humanitarian grounds, that a number of Turkish settlers should have the right to stay in Cyprus as citizens under the new state of affairs. What however we were not willing to accept, as you very well knew, was that each and every settler, indeed all, should be entitled to remain and ultimately acquire citizenship. Neither we were ready to endorse new provisions allowing fresh settlers flows in the future, thus altering further and distorting the demographic balance on the island.

However, under the final Plan not only the entirety of settlers were to remain in Cyprus and the possibility for a permanent flow of settlers form Turkey was left open, but all of them were allowed to vote during the referendum. This was so, despite established international law and UN practice, and

persistent repeated calls of our side to the contrary, which were utterly disregarded. The end result, is that once more the settlers have participated in formulating the will of Turkish Cypriots during the referendum of April 24, and this against every norm of international law and practice.

Functionality is not exhausted to the composition of the Presidential Council or the setting up of a Court of Primary Federal Jurisdiction. Functionality covers all the areas of the operation of the state and our concern for functionality was reflected in all of our proposals during the process covering, *inter alia*, federal legislation and its practical application, the Central Bank, fiscal and monetary policy, the curtailing of the various transitional periods, ensuring conformity with EU obligations, the administrative structure and function of the federal government, the decision-making process at all levels, the territorial aspect and the issue of the missing persons. All of the GC suggestions concerning functionality are fully documented, have been within the parameters of the Plan and did not affect in any way the rights afforded by the Plan to the Turkish Cypriots.

The objective of most of the GC side's suggestions, viewed, as an integral whole, have been to achieve the functionality and the workability of the solution, thus ensuring its viability and smooth operation. The attainment of these objectives (functionality and workability) could not be the automatic result of the adoption of a few marginal elements contained in our relevant proposals in exchange for some new Turkish Cypriot demands. Thus, on no account can be claimed that "functionality and workability" requirement had been met.

In addition, we maintain serious doubts on whether the final Plan is compatible with the *acquis communautaire*. As it is well known the European Commission did *not*, in any case, examined one by one the provisions of the final Plan. The Commission simply examined Annan I, not subsequent versions. Thus, it would be interesting to know what the legal and jurisdictional organs of the EU have to say on the final Annan Plan.

At any case, as it is well known, what is of equal importance with the compatibility of the Plan with the *acquis*, is the ability of Cyprus to function effectively within the EU as a Member State, something that clearly has not been achieved by the Plan.

Excellency,

It is utterly inaccurate to state, in paragraph 69, that I have never presented proposals on security to the members of the Security Council. They are well cognizant of an *aide memoire* distributed by the Permanent Mission of Cyprus to the UN, on 20 April 2004, during the deliberations on the British – American draft resolution. The inclusion of this allegation is offensive, to say the least, because I have personally pointed out this inaccuracy after Mr. Alvaro de Soto alleged so publicly.

Moreover, the Greek Cypriot side did not bring up the issue of security for the first time on 20 April. In fact, on 15 March, we submitted a comprehensive voluminous paper concerning the security issue, wherein our suggestions were elaborated in detail and with absolute clarity. Either Your Excellency, advised by Me. de Soto, did not give serious consideration to our positions on such a crucial issue or Mr. de Soto did not bother to read our paper with due care and attention.

We share the view that membership in the European Union adds to the general feeling of security and we hope that Turkey's European aspirations will lead her to display more respect for international law norms and the implementation of UN resolutions. However, it remains an uncontested fact that we still have serious security concerns as a result of the presence of Turkish occupation troops and Turkish overall behavior. Recent illustrations of the latter are the Resolutions relating to Strovilia, that required the withdrawal of Turkey's occupation troops a few meters away that had not been complied with. Even more disturbing and insulting, for the United Nations itself, is the unheeded call by the Security Council for Turkey to lift the restrictions imposed on UNFICYP.

Acceptance and implementation of the Plan would have had profound consequences. Given that all parts of the Plan constituted an integral whole and were of equal importance, it was imperative that before embarking on its implementation all the proper iron cast guarantees should have been in place that each and every party concerned would comply with all of its obligations arising therefrom.

Regrettably, contrary to the Secretary-General's aims in formulating the Plan, the arrangements for implementing territorial adjustments under Annan V would have resulted in a "win - great risk of losing "situation" and not in a "win-win" situation, as intended by the Secretary-General. The arrangements, as envisaged under Annan V, would have given the Turkish Cypriots real and considerable benefits governmentally, politically, internationally, economically, security-wise etc, from the very first day of the Foundation Agreement coming into operation. In contrast, the two benefits for Greek Cypriots, namely territorial adjustments and reductions in the size of the Turkish Army in Cyprus, would not begin immediately, and would have taken a number of years to be phased in.

In this way, the implementation of the Plan, especially those provisions of crucial interest to the GCs, would have been contingent to Turkey's good will, which, for the last 30 years at least is far from forthcoming even in embryonic form. When for the last thirty years, due lack of good will on the part of the Turkish side, no progress whatsoever has been achieved in relatively simple issues of profound humanitarian nature such as the investigation of the fate of the missing persons, it would be very imprudent to rely on Turkey's good will for the full, prompt and proper implementation of a Plan purporting to provide a comprehensive solution to the Cyprus problem.

More importantly, the present Turkish Government, despite its efforts to present an image of a country ready to cooperate and respect the norms of international law, continues its unjustified hostile policy against Cyprus. Using its right of veto, Turkey continues to hinder the accession of Cyprus to a number of technical international organizations, amongst which the OECD. The commercial fleet of Cyprus, a Member-State of the European Union, is still denied the right to approach any Turkish ports. The most recent and illustrative action of this deliberate Turkish policy was the extension of its customs union agreement to nine of the ten new members of the European Union, the tenth being Cyprus which was unreasonably excluded at the very moment when Turkey aspires to future membership in the EU.

Under these circumstances, one must logically wonder how much trust and confidence the Greek Cypriots can place on vague promises, in the absence of concrete and ironclad guarantees, that Turkey

will fulfill all its commitments under the Plan. Experience has unfortunately been pointing to the opposite direction, since no signs by Turkey of an ending of its hostile acts against Cyprus are witnessed.

While we appreciate your stated disapproval of the idea of separate recognition of the secessionist entity in the occupied part of Cyprus, we strongly object to the conclusion of the Report. In particular, we can not accept the suggestion contained in paragraph 93, that members of the Council "*can give a strong lead to all States to cooperate both bilaterally and in international bodies to eliminate unnecessary restrictions and barriers that have the effect of isolating the Turkish Cypriots, deeming such a move as consistent with Security Council resolutions 541 (1983) and 550 (1984)*". In any event, this suggestion lies clearly outside the Secretary's General good offices mission and is in direct contravention to the SC resolutions and international law.

Furthermore, there is no doubt that our common goal for the reunification of Cyprus will be negatively affected for ever by such proposed actions, which undoubtedly will lead to the upgrading of and creeping or overt recognition of this secessionist entity. This would be done in direct violation of *Security Council resolutions 541 (1983)* and *550 (1984)* and the prevalent norms of established international law. The adoption by the Security Council of this particular suggestion will be paradoxical, since it will amount to an incomprehensible negation of its own categorical call to all States "*not to facilitate or in any way assist the aforesaid entity*".

We strongly believe that the welfare and prosperity of the people of Cyprus lie with the economic integration of the two communities and the unification of the economy of Cyprus, and not with the encouragement of separatist tendencies. In this respect, any moves or initiatives, aiming at first sight to the economic development of Turkish Cypriots, but with evidently hidden political extensions, create nothing more than a disincentive for a solution and promote the permanent division of the island.

Various methods elaborated by certain circles for the direct opening of ports and airports in the occupied part of Cyprus, as a mean of facilitating the direct trade with these ''Areas'' of Cyprus, serve exactly this purpose. Such moves lack any sound legal basis. In fact, based on outrageous justification proposals they clearly try, unsuccessfully though, to promote and present a situation of external trade with a secessionist entity as lawful. Not only all these efforts fail to respect legality, but also more importantly the end result is that they violate the very norms from which they try to derive their legal validity. The outcome is a doubtful attempt to legalize an illegal situation in a territory of Member-State of the EU, where the application of the *acquis communautaire* is suspended, whilst at the same time creating serious practical problems, thus setting dangerous precedents for the future.

The Government of the Republic of Cyprus is the first to support the economic development of Turkish Cypriots; an economic development based on the proper criteria that promote the ultimate aim of facilitating the reunification of our country. We have shown this in practice by the announcement and implementation of two packages of measures, of 30 April 2003 and 26 April 2004 respectively. These measures have in essence freed the intra island trade of agricultural and manufactured goods, fisheries and minerals, produced in the northern part of Cyprus, as well as their

exports through the legal ports and airports of the Republic of Cyprus. Unfortunately, due to political considerations, such far-reaching measures are not being made use of, due to the insistence of the occupation regime for direct trade through illegal ports and airports in violation of international law.

It is more than evident that Turkey and the Turkish Cypriot leadership are not genuinely interested about the economic development of the Turkish Cypriot community, but primarily for the upgrading and ultimate recognition of the secessionist entity. In this respect, I would also like to bring to your attention the efforts currently under way for upgrading the status of the Turkish Cypriot community in the Organization for the Islamic Conference to a "Turkish Cypriot State". I urge your Excellency to seriously consider the direct implications of the suggestion contained in paragraph 93 of the Report for the reunification of Cyprus.

I should be grateful if the present letter is circulated as a document of the General Assembly under agenda item 30, and of the Security Council.

(signed)

Tassos Papadopoulos
President of the Republic of Cyprus

Annex

Comments by the Government of Cyprus on the Report of the Secretary General on his mission of go offices in Cyprus (S/2004/437 of 28 May 2004)

Introductory remarks

The United Nations´ Continuing Role in Promoting an Agreed Cyprus Settlement

1. The Greek Cypriot side has always relied on the principles embodied in the Charter of the UN, international law and on the resolutions of the Security Council in its search for a freely agreed solution of t Cyprus problem and for reversal of the effects of Turkey´s military intervention in Cyprus. It has always h faith in the good offices of the SG, pursuant to guidelines of the Security Council. It has always shov determination to negotiate a solution, with a mutually acceptable constitutional arrangement which wou ensure that the independence and territorial integrity of the Republic was maintained in a reunited Cypru Throughout that period, various Secretaries-General and their representatives worked hard to achieve th result. They were trusted to act in accordance with the UN Charter and within the framework of the Securi Council's Resolutions establishing the Secretary-General´s mission of good offices (since SCR367 (1975)) a the Security Council's position taken (ever since SCR649 (1990)) on reunifying the Island by way of a b communal bi-zonal federation in line with the Cypriot parties´ 1977 and 1979 high level Agreements.

2. The ultimate goal remains unchanged, that of seeking a bizonal, bicommunal federation, so that a Cypriots may benefit from accession of their country to the EU, looking beyond the past and cooperating o the best of terms in peace and security. Such search will be based on the existing Plan.

3. Although disappointed at and concerned by the recent Report, skilfully slanted by its drafters to present c operative Turks and unfairly isolated Turkish Cypriots as against obstructive Greek Cypriots blocki reunification of Cyprus, the Government of the Republic believes that the United Nations will in due cour revert to its hitherto impartial stance and once again use its best endeavours to promote an agreed settlement the problem confronting Cyprus. Believing this, it is necessary to set out where and how the recent Repo mis-presents the situation, because the Report´s errors and distortions will, unless corrected, harm the prospec of future agreement. Both sides need seriously to consider what can be salvaged from the Plan, rather tha basking in smug self-satisfaction, having been patted on the back by the very draftsmen responsible f formulating a Plan so unacceptable to a large majority of the population of Cyprus. Before embarking on systematic analysis of the Report´s deficiencies and its coloration, intended both to conceal the Secretariat misguided negotiating tactics and the idealisation of the Plan´s provisions, certain basic points requi emphasis. No mention is made of the fact that the very same Plan in its previous versions had twice bee turned down by the TC side. Nor was there any reference to previous reports of the SG, squarely putting th blame for the failure of the efforts on the Turkish side. Significantly, as opposed to now, no measures we then suggested for pressurising or "punishing" such side because of its negative stand, even though this ha been long-continued.

Delays and the consequent last minute rush were caused by Turkey

4. The debate was caused by undue haste and a rush to impose a settlement in the 2½ months before Cyprus entered the European Union as a Member State. That the time for negotiating an overall settlement and the many associated matters was so brief was not the fault of the Greek Cypriot side, but that of Turkey and the Turkish Cypriot side. From December 1999, when the recent negotiations started, until the end of March 2004, every effort to achieve progress was made by the Greek Cypriot side. In contrast, the Turkish and Turkish Cypriot sides would not negotiate throughout 2001, the last months of 2002, and from March 2003 to February 2004.

Throughout 2003 the Greek Cypriot side pressed for resumption of negotiations, so these could be completed by 1 March 2004, leaving two months for a proper campaign prior to referenda preceding Cyprus' EU entry on 1 May 2004. A letter from President Papadopoulos to the Secretary-General on 17 December 2003 initiated the recent negotiations. In contrast, Turkey only decided to resume negotiations on the Plan on 24 January 2004, when her National Security Council (the formal State body expressing Turkish Army views) confirmed the Turkish Foreign Ministry's proposed policy of re-opening Cyprus negotiations through the Secretary-General.

The latest Report has been drafted, obviously by UN personnel, who participated in the drafting of the Plan and looks as if it is an "argument" or a "pleading" in support thereof. It gives their views and places the blame on the GC part of the people of Cyprus for having expressed their disapproval at the Referendum of the 24 April 2004. It contains assumptions and a narration of the facts, which do not always correspond to the actual events. It is a highly subjective evaluation of the negotiations and of the overall "balance" of the Plan.

That the Plan was so comprehensively developed into a form capable of being put to Referenda was mainly due to the sustained efforts of the GC side, particularly its determination to remain within the existing Plan's parameters throughout the recent negotiations, its preparation of thousands of pages of legal documents and its goodwill exhibited throughout the four and a half years of negotiations with which it persisted in pursuit of a solution.

Turkey's substantive policy was implemented by Mr Denktash and has only marginally changed

5. Even after the Turkish decision to re-open negotiations, Mr Denktash remained (and still is) "leader" of the Turkish Cypriot side. The Report's picture of a "triumvirate" (**para 15**) and new "leadership" (**para 6**), together with its fulsome praise of Mr Talat and Turkish Cypriots (**paras. 76, 87, Annex III, para 4**), is designed to obscure that the Plan has incorporated Turkey's policy of two separate "sovereign" ethnically–composed States in Cyprus, only loosely linked together, and that Turkish demands for this were, by technical legal drafting, satisfied in the final version of the Plan, even though their adoption is inconsistent with the framework laid down by 30 years of UN Resolutions on Cyprus. Only after Mr Denktash's refusal to come to Bürgenstock for meetings from 24 March 2004 were some of his demands flagrantly contradicting the Security Council's Resolutions put aside. Even then, his authorised agents, Messrs Talat and Serdar Denktash, were kept under his orders and those of Turkey's Foreign Ministry via Ambassador Ziyal, present in the New York, Nicosia and Bürgenstock negotiations and giving continuous policy directions. Ambassador Ziyal saw that the Turkish Cypriot side concentrated on a few provisions, demanding that the Plan be changed: to meet Turkey's security interests; to enhance the Turkish Cypriot constituent state's power to restrict Greek Cypriots from living, conducting business or acquiring property there; and to empower its government to act independently in spheres which should have been exclusively federal.

Praise of Turkish Cypriots designed to circumvent SCR541 (1983) and SCR 550 (1984)

6. The fulsome praise in the Report is also designed to secure an unlawful objective, namely, to give Turkey's subordinate local administration in occupied Cyprus the economic attributes of an independent state without formally recognising it. That entity would then, despite the protestations in the Report about not assisting secession (**Introduction, paras. 90 and 93**), be able to function so that there was no incentive to move to reunification of Cyprus. It is an attempt to by-pass a jus cogens rule of international law, which forbids recognition of the fruits of aggression. That rule is the reason why SCR541 (1983) and SCR550 (1984) were passed. Yet not a single word in the Report indicates that the Republic of Turkey is in unlawful military occupation of 36.4% of Cyprus, controlling that large proportion of Cyprus through 35,000 Turkish troops and her subordinate local administration. Instead, the Report implicitly suggests that such Turkish local administration be given all the benefits of international co-operation and participation in international bodies.

Historical observations

7. In **paras. 2 to 14,** the Report makes reference to the time after The Hague, but the drafters fail to mention that the Secretary-General squarely placed the blame for the failure at The Hague on the Turkish side. Nor do they mention that, prior to The Hague, the GC Leader had set out the main concerns of the GC side (**letter of 28 February 2003, delivered on 28 February to the SG**). He had emphasized that his readiness to support the Plan was dependent on those concerns being satisfied. Only if the other side would do likewise, was he prepared not to reopen the substantive provisions of the Plan.

8. Though in **para. 6** the drafters write that "most of 2003 was a fallow period," no mention was made of the reasons for this, which were the continuous negative attitude of Mr. Denktash and the support he was receiving from the Turkish Government. Nor did they mention the constant positive stance of the GC side. (Statements by Mr. Denktash, Mr. Erdogan and Mr. Gul are available).

9. The drafters consider **(para 6)** that the December 2003 vote in the TC community "brought to the fore a new Turkish Cypriot leadership". This TC new leadership did not replace Mr. Rauf Denktash, who was present in New York (10-13 February) and during all talks until 22 March 2004 appeared as "leader". It was he who on 24 February presented his positions, which were way outside the parameters of the Plan. The GC side was never told by the UN team either in New York or thereafter that there was a leadership "triumvirate". On the contrary, the UN seemed to consider Mr. Denktash as the "leader" **(e.g. page 1 of the Summary and inter alia, paras. 10, 11, 12).** The others (Mr. Talat and Mr S. Denktash) were members of his negotiating team. Mr. Rauf Denktash has never ceased to claim that he is still the "leader". Whereas he refused to attend the Bürgenstock meetings, he then, as leader, authorized other persons to be present and such authorisation was considered valid by the UN.

10. Despite the April 2003 Report by the SG, which had criticized the Turkish side, the UN undertook no initiative in that "fallow" time, tolerating the tactics of the Turkish side and taking no measures to "break it" or to "punish" the "guilty" party. The drafters of the current Report, in creating the atmosphere of co-operation and progress all being due to Turkey, also play down the importance of the letter from the President of the Republic, on 17 December 2003, which, after the long delay, with there being no fault for this attached to the GC community, actually restarted the ball rolling. On the contrary, the meeting between the SG and PM Erdogan in Davos is emphasized in their Report as being important. Mr Erdogan is quoted as saying that he would be "one step ahead" for many years. The actual fact is that the GC side were then many steps ahead.

11. **In paras. 12 and 14** the drafters speak of the 13 February "agreement". This "agreement" in fact comprised both the "Statement attributable to the Spokesman of the SG" and the SG's letter to the leaders of 4 February 2004, outlining the procedure to be adopted. Together they formed the basis of the "three phase process" leading to the Referendum (if one considers the Referendum as not being a fourth phase).

The First Phase

Attempts to discredit the Greek Cypriot side's conduct in the negotiations by its presentation of a "vast bulk" of materials

12. The Greek Cypriot side has always worked for a stable and enduring solution and a properly considered constitutional settlement. There had not been any proper consideration by the UN team of young lawyers of economic and financial matters or of changes necessary in light of Cyprus's impending EU membership. The property scheme and much of the Constitution had never been directly discussed by the two sides. The Greek Cypriot side took at face value and as genuinely necessary Mr de Soto's proposal to both sides in "Clusters of Issues," 20 February 2004 (referred to in **para 18**). He had written:

> "The UN suggests that each side explain in concrete terms, including with non- papers as necessary, the actual changes they want to the plan, taking the Clusters, in turn during the coming meetings."

Accordingly, the Greek Cypriot side presented specific changes and reasoned explanations why these were necessary. They dealt with the major aspects of the Plan which they had, ever since President Papadopoulos' letter of 28 February 2003, stated required to be changed; they raised other issues consequential upon the Turkish Cypriot proposals (as the Greek Cypriot side explained); they raised crucial issues arising from the Technical Committees' work (e.g. refusal to accept, at Turkey's instance, that Cyprus had a continental shelf); and that the "treaties" with Turkey and her subordinate local administration were aimed at integrating the occupied area and Turkey but were now to be applied to all of Cyprus and they pointed out some significant drafting defects in the Plan and its Annexes. The future Constitution, the economy and the long-term rights of hundreds of thousands of Cypriots were at stake. Yet several paragraphs in the Report snidely scatter criticism at the Greek Cypriot side for its serious approach to the negotiations. **Paragraph 8** ironically claims that the Secretary-General was reassured by President Papadopoulos that he did not want "forty or fifty" changes to the Plan"; **para 19** refers to "the virtue of concision" of the Turkish Cypriot proposals (substantially altering key parameters of the Plan); and **para 20** contrasts Turkish Cypriot behaviour with the conduct of the Greek Cypriot side, which took each issue in turn (as invited to do) and produced "dense and lengthy papers one after another." **Para 20** also sarcastically states that, "As they continued to present papers, it became apparent that the 10 February 2004 paper summary of Greek Cypriot demands was far from exhaustive". This is a reference to a "Talking Points" summary produced in New York at 10 minutes notice upon request of the Secretary-General who knew that the Turkish Cypriot side was intending to produce outline demands agreed with the Turkish Foreign Ministry. (The Report is silent on this tactic.) However, in a meeting of 22 February, immediately after Mr de Soto had presented his paper "Clustering of Issues," President Papadopoulos had emphasised that the 10 February paper did not comprehensively state the issues. The Report continues in this sarcastic vein referring (at **para 22**) to "the vast bulk of the material" and adds an innuendo (effected by quoting the Turkish Cypriot side) that the Greek Cypriot side was "filibustering". Again (at **para 37**), the Report exaggerates the scale of Greek Cypriot proposals (running to 44 pages). In fact, produced at UN request although if the Special Adviser read the papers earlier presented he would have known what was proposed, a 3 page list was provided while the 44 pages consisted of legal texts, including crossed out texts and relevant contexts of legal provisions, so that each amendment could be understood in context. The actual text would have been less than 6 pages of changes to 9,000 pages of the Plan and its Annexes.

Attempts to discredit the Greek Cypriot side for not giving the Special Adviser its "priorities"

13. In **para 20** the Report claims that the Greek Cypriot side

> "declined to prioritise its demands, despite my Special Adviser's request of 15 March to both sides to do so".

Paragraph 20 was preceded by **para 19**, where the Report claims that in mid-March

> "The Turkish Cypriot side replaced their initial papers with a less far-reaching set of proposed textual amendments, described as a priority list".

Such "list" was not sent by the UN to the Greek Cypriot side until 19 March (**Letter de Soto to President Papadopoulos**), but there was no indication whatsoever in his letter that there was any priority. The letter merely listed the attached documents by their titles "eg. Consolidated list of Turkish Cypriot Proposals (revised text)," dated 18 March 2004.

Para 20 also asserts that the Special Adviser had, in suggesting agendas for meetings and in primary discussions of the items clustered for consideration,

> "left aside Turkish Cypriot demands which were clearly outside the parameters of the plan".

These statements give a misleading impression of the tactics followed by the Special Adviser. What in fact happened was that, at the start of the Nicosia phase of negotiations, the Special Adviser had on 20 February selectively assembled in a "non-paper" substantive points made by the two sides in New York on 10 February in their "Talking Points". He grouped the sides' points as four "clusters" of issues, suggesting that the sides concentrate on his "clusters," which he so grouped as to indicate that there should be bargaining inside each cluster. This tactic of seeking to confine the sides to the clustered issues was rejected by both Mr Denktash and President Papadopoulos. Moreover, President Papadopoulos emphasised in further "Talking Points" of 22 February, and orally in a meeting, that although the Special Adviser asserted he was not implying trade-offs by virtue of grouping the issues into the 4 clusters, the only reason for their combination was trade-offs and many of the issues taken from Mr Denktash's 10 February speech were outside the parameters of the Plan. He explained that the Greek Cypriot side was not willing to discuss matters outside the scope of what had just been agreed in New York. The "clusters" therefore became an outline agenda only. Mr de Soto then waited until the sides had laid out their proposals, and then on 15 March submitted Talking Points on which he would "shuttle". These Talking Points he listed in two categories. The first category attempted to get the two sides to discuss

> "changes on the substance where one party or the other, or sometimes both, are seeking changes that affect the balance of one of the parameters of the Plan, or to respond to a demand from the other side for such changes."

He made it clear that he looked for trade-offs here "within or between issues" and that the sides should prioritise changes. In his second category, he sought to discuss practical matters, so as to enable the Plan actually to work and for both sides to get what the Plan promised them. The Greek Cypriot side, relying on the Secretary-General's undertakings in his 4 February 2004 letter that the parameters of the Plan should not be altered, refused to make proposals to that effect, and declined to be lured into opening up the first category by prioritising any matters within it. It was however anxious to discuss the practical matters to make the Plan work, and made proposals covering the second category, co-operating with the Special Adviser (as shown in **para 25**). The Special Adviser's tactics of presenting the Turkish Cypriot demands in his "Talking Points" (although they were mostly outside the Plan's parameters) and of suggesting that the sides start bargaining on these was therefore frustrated, so trade-offs could not be proposed by him (**para 26**).

14. Most Turkish Cypriot demands, which had only partially been abandoned, and which were outside the Plan's parameters, remained. They consisted, inter alia, of demands for permanent stationing of Turkish troops in Cyprus; a switch from the core bargain of political rights being based on place of residence and not on ethnic identity; bi-zonality and bi-nationality restrictions to continue after Turkey's EU accession; and return of fewer

Greek Cypriot displaced persons. The Special Adviser continued to look for "trade-offs" and "win-win" situations, using States with envoys at Bürgenstock to press the Greek Cypriot side into bargaining on these matters. The Greek Cypriot side declined to give priorities for this purpose. They had no expectation, in view of what had been agreed in New York (**letter of 4 February 2004 as modified by the Spokesmen's Statement of 13 February**) that the Secretary-General would use the limited discretion conferred upon him to insert in the Plan new matter going beyond its existing parameters. That the Secretary-General later saw himself as having carte blanche (despite his having been given a paper by the Greek Cypriot side "Talking Points," dated 17 March 2004, and setting out the framework in which the discretion was exercisable) is apparent from **para 32** of the Report. The Secretary-General appears to think that, since it might fall to him to finalise the Plan, there was a duty on the parties (the Cypriots) to impress upon the UN their key priorities and to indicate what changes they might be prepared to live with to accommodate the other side. There is criticism of the Greek Cypriot side in **paras. 37 and 66** for not prioritising or engaging in give and take with Turkey and the Turkish Cypriots. But the negotiations had a framework, which should have been observed by all parties, not least by the UN.

15. The Greek Cypriot side was not being formalistic and rigid in declining to prioritise. Prioritisation was in any event difficult, because there were major inter-related points in connection with each strand of the Plan (functionality of the Constitution, security, implementation of the territorial, security and other aspects, property and residential rights, the situation under EU law etc). Nor was it possible to assess the outcome of particular "concessions" or "priorities," all aspects of the Plan being interconnected, until such time as the whole picture could be seen: specific points could not sensibly be singled out without appreciation of the overall balance. Finally, to have given priorities would necessarily have implied that, if some Greek Cypriot priorities or parts thereof were put in the final text by the Secretary-General, there would have been a "balancing" by his putting in the text as against these priorities provisions satisfying Turkish demands beyond the Plan's parameters, and that such a "balancing" had been agreed to by the Greek Cypriot side.

16. In essence, the SG's Special Adviser was following an improvised method of conducting the negotiations. It was a method aimed at a mathematical balancing of unrelated issues and which failed to concentrate on substance, or to have regard to principles of the UN Charter and international or constitutional law. A glaring example was his demand for priority lists, while he had before him detailed documents on all issues put forward by the GC side. Whilst we understand his effort to "simplify" things and meet time constraints, the Cyprus problem was not a matter to be dealt with in a simplistic way. The process was not intended to give the UN discretion to choose between parties' "key priorities," but only to make indispensable suggestions in the event of continuing and persistent deadlock (**paras. 32 and para.37**).

17. Another method used in the Report to criticise the Greek Cypriot side is the suggestion in **paras 21 and 66** that the Greek Cypriot side would not engage in "trade-offs" and give and take. However, the Greek Cypriot side offered to make trade-offs as regards its request for UN administration of the territories to be adjusted, offering in exchange full rehabilitation of affected TCs and intense work to this end. This was rejected by the TC side. Likewise a suggestion to trade-off Community representation in the Senate for removal of restrictions on resumption of residence by GCs was not accepted. Nor was there acceptance of a general proposal for trade-offs made on 20 March by President Papadopoulos in Nicosia. The only issues on which the TC side would engage and compromise were the composition of the Presidential Council and its functioning, especially as regards the EU, and a federal first instance court. All other GC proposals about security, implementation, the period of transitional government, treaties, Laws, property, Turkish settlers were flatly rejected.

18. In **para. 26** the drafters after claiming that the TCs responded more positively, and trying to play down the "mini-crisis provoked by Mr. Denktash's decision not to attend phase 2 of the process", assert that the "asymmetry of the response" by the Greek Cypriot side prevented the UN from proposing trade-offs on the major issues. It is not surprising that the Turkish Cypriot appeared positive: they were being allowed by Mr de Soto's 15 March Talking Points "framework" to raise changes on substance affecting the balance of several of the parameters of the Plan, while the Greek Cypriot side was objecting, because the process agreed in New York did not envisage such changes (**13 February statement read with 4 February letter**). The GC side, although refusing to discuss the first category of changes, discussed the Special Adviser's second category (issues where the parties sought to ensure the Plan would work and to give each side what the Plan promised). Such issues were not "secondary issues," as the Report indicates, but major issues (implementation of the Plan, the question of whether there would be a long transitional period of joint government).

19. In **para 83** it is mentioned, albeit in brackets, that 120,000 displaced Greek Cypriots would be returning under Greek Cypriot administration. This is most definitely not so. Based on the 1973 Census of population 85,000-90,000 displaced persons would be the maximum number able to return. They were not a majority of the refugees. It is curious, to say the least, why the Report exaggerates the number of displaced persons who potentially may return by extrapolating the population to its present levels including the descendants of many who have left Cyprus. The UN negotiating team well knows the true facts. At the same time, in **para 51**, it is mentioned that "over time 100,000 Greek Cypriots would be able to take up permanent residence in the Turkish Cypriot State". Here again the figures are grossly exaggerated and no time frame is given. The actual potential numbers are as follows: between 2010-2013 12,000-13,900 persons were eligible to resettle; between 2014 and 2018 the cumulative number would have increased to 26,700 – 31,500; and between 2018 – 2023 the maximum cumulative number could have become 44,000 to 51,000.

20. As to territory, **paras. 22 and 59** are contradictory. In fact the drafters attempt to shift responsibility for not clearing the map to the Greek Cypriot side, by saying (**para 59**) that they did not discuss their own territorial ideas, even informally with the UN. The UN team knew, however, that the territorial aspect, combined with the number of displaced Greek Cypriots to resettle under Greek Cypriot administration, was all along a main concern of the GC side. The drafters of the Report fail to mention that the "straightening" of the line between federated states had been repeatedly mentioned by the Turkish side, but this was, as it turned out, only a tactic to avoid discussing the territorial issue. Nevertheless, territory was always brought up by the Greek Cypriot team and the reference on para 22 proves it. Surely it did not escape the UN team that, even in the absence of the President in Brussels, Mr D. Christofias, acting as leader of the Greek Cypriot side, at three separate meetings with Mr de Soto and the representatives of Security Council permanent members on the 26 March 2004, raised the territorial issue again and the Karpas area in particular.

The second and third phases

21. **In para. 35** it is mentioned that the Special Adviser of the SG was not able to meet the GC leader at Bürgenstock, due to Mr. Papadopoulos' other commitments in Bürgenstock and Brussels. This statement has no foundation. Mr de Soto showed signs of pique when, upon his arrival at Bürgenstock on 23 March, he asked to see the President at 7 p.m., but the National Council had been convened to meet at that time in order to examine the "authorisation" granted by the leader of the TC community, Mr Denktash, to Mr. Talat and Mr. S. Denktash. The President's office replied that he was available to meet Mr de Soto at 8 p.m. At 7.45 p.m., Mr. De Soto stated that he could not meet the President at 8 p.m. Nevertheless the meeting took place at 10.45 p.m. As to the absence of the President in Brussels, Mr. De Soto knew long before the Bürgenstock meetings that the President would be attending the EU Summit Council on the 25-26 March and that in his absence, Mr.

D. Christofias was fully authorised to act in the President's stead. It is completely denied that the Special Adviser had difficulties in meeting the GC side at any time, and one wonders why such statements are made.

22. Another inaccuracy appears in **para 36** in relation to the framework presented on 25 March "for signing an agreement should one emerge by 29 March," by stating that: "The Greek Cypriot side did not [react to this framework] but publicly indicated concerns about it". This does not reflect the true facts. Mr. Christofias on 26 March confirmed to the National Council that Mr. Vassiliou had on behalf of the Greek Cypriot side notified Mr. De Soto that there could be no signature, because this had not been agreed as part of the procedure in New York. Only thereafter was a public announcement made.

23. **Para. 37:** On 1 March 2004 the GC side gave a general but full account of the changes it desired, explaining that further specific proposals would be developed as a result of the positions taken by both sides in the negotiations. Since the Technical Committees' work also involved constitutional issues (many being placed in Laws) and the work was not finalized, specific amendments kept being made until 22 March. The Report tries to exaggerate the scale of GC demands (see para 12 above). As there pointed out, the Greek Cypriot side made only 44 pages of specific textual changes (all these set in their contexts) to over 9,000 pages of the Plan and its Annexes. This shows how careful the GC side was not to make extensive demands.

24. **Para. 39.** There was no misreading by the Greek Cypriot side of what the Turkish side sought. What was sought was set out in Mr Ziyal's 26 March paper, which came into Greek Cypriot hands through the press. On 29 March, the Secretary-General told Mr Erdogan that he had got virtually 9 of the 11 points demanded and half of each of the balance. On 31 March he gave Mr Erdogan the remaining parts of Turkey's points upon making the settlement primary law of the EU, lifting the quota barrier to immigration from Turkey, and providing for permanent stationing of Turkish troops in Cyprus.

25. **Para. 42.B,** says constituent state constitutions were "exchanged for information between the two sides". This gives a misleading picture. Although the TCCS constitution should have been given on 12 March under the arrangements made in New York and this date was complied with by the Greek Cypriot side, there was no TC compliance. Only on 28 March was the GC side presented with a document and given only a few hours to look at the TCCS constitution. After that very night being provided with the Greek Cypriot side's comments (which showed that there were many inconsistencies with the FA) the UN stated that it was too late to make any changes.

26. **Para. 42.C., para. 45, para. 54, para. 63**, misstate what Annan V provided. Annan V left it ambiguous whether the guarantors had to sign the Treaty into force before the Foundation Agreement came into operation. The GC side indicated its concern as soon as it discovered a change in Annan V on returning to Nicosia. On 6 April, Turkey failed to provide a proper commitment to undertake completion of its internal ratification procedures and to sign the Treaty into force. The UN was aware of Turkey's failure, but decided, when Turkey declined to do anything, to "understand" Turkey's evasive letter as honouring the commitment and the Secretary-General wrote to Mr Erdogan to such effect on 7 April 2004. Had this been left as it was, the Turkish Grand National Assembly could have delayed ratification and they, and President Sezer in terms of Article 89 of Turkey's Constitution, could endlessly have batted back to each other a ratifying Law, thus being able to extort new concessions from a UCR without any Turkish troop reductions. President Papadopoulos obtained a legal Opinion from 2 leading jurists, one a member of the International Law Commission and the other a former member, about the risks of this procedure for the future of Cyprus. Accordingly, President Papadopoulos wrote to the Secretary-General on 8 April 2004 with the Opinion, indicating that the referendum was dependent upon the Guarantor Powers' commitments being duly given (quoting the Secretary-General's 31 March letter). Only thereafter did the UN obtain a written assurance on 12 April from Turkey's Permanent

Representative to the UN and on 18 April re-amended the Plan by Clarifications and Corrigenda. There is silence in the Report about Turkey's action to give herself room for manoeuvre not to sign the Treaty into force and silence about the Secretariat's unwillingness to do anything to secure compliance unless compelled to take action. It is interesting to note that these legal issues were associated with the UN's last minute changes on 31 March to the "null and void clause" of Annex IX should the referenda be negative. Earlier the UN had tinkered with the same clause, actually removing it without any forewarning, from the Plan in Annan III of 26 February 2003. Only President Papadopoulos' strong objection by letter of 28 February 2003 resulted in the clause being reinstated by the Corrigenda of 8 March 2003.

27. **Para. 42D.** The draft Act of Adaptation of the UCR's accession to the EU contained in the Plan was not "in line with the principles on which the EU is founded". The Draft Act, annexed to the Plan, was adapted so as not to apply these principles, and so as to override them-by virtue of "adaptations" departing from these principles being made "primary law" of the EU.

Para 42E and para 69. These paragraphs give a false picture. President Papadopoulos did not "subsequently" to the Secretary-General's 16 April Report indicate his desire that the Foundation Agreement not be endorsed by the Security Council. At Bürgenstock it was made clear that the Greek Cypriot side did not believe endorsement by the Security Council should be used as a device to persuade the Cyprus public. Moreover, in **para 69** the false statement is made that President Papadopoulos did not wish the Council to take decisions before the referenda "even on security issues". In fact, in his letter of 13 April (note also that this was before, not subsequent to, the 16 April report), President Papadopoulos requested the Secretary-General, while not seeking endorsement of the domestic arrangements for Cyprus, to "put the security aspect to the Council". Furthermore, the Permanent Mission of the Republic of Cyprus to the United Nations, upon instructions from the Government, conveyed to all members of the Security Council, on 20 April 2004, a Memorandum with specific proposals to be reflected in the draft Resolution presented to the Council. All proposals were addressing security issues and in particular were aiming at strengthening the provisions for the implementation of the Foundation Agreement, subjecting any right of intervention by the Guarantor Powers to a prior authorization of the Security Council, assuring the compatibility of the Treaty of Guarantee to the UN Charter and at stating clearly that the objective should be the total withdrawal of foreign military forces from Cyprus.

Other provisions

28. The Report from **paras. 43-57** is written to show how "balanced" the Plan was and how much it was improved to meet GC and TC concerns. But, the Secretary-General did not have discretion to make "improvements" to address key concerns. The Report is written so as to obscure his assumption of the role of an arbitrator, whereas he had not been empowered to act in that way, and his Special Adviser misinterpreted the arrangements made in the 4 February letter and 13 February statement in New York to assume such functions. Indeed, the account of what the Report now calls the 13 February 2004 agreement and the "enlarged role" of the Secretary-General (**paras. 3-14**) is designed to mask the appropriation of powers which were not agreed, which certain permanent members of the Security Council had earlier sought for the Secretary-General. Ultimately his Special Adviser "finalised" the Plan for the Secretary-General as if he had indeed been endowed with such a large competence. It needs adding that in the Report's promotion of the virtues of the Plan, setting out how improvements were "inspired" by the two sides' concerns, most of those attributed to the TCs were really those of Turkey, which, contrary to its role as agreed in NY, demanded that its major proposals of 26 March be accepted.

29. **Para. 46**. The Secretary-General's proposals for assurances regarding implementation did not address the GC requests that the UN be involved throughout the period proceeding transfer of the territory due to the readjusted so that return of the property in good order could be ensured.

30. **Para. 47.** This alleged significant reduction in Turkish troop levels is misleading. Troop numbers would remain the same until 1 January 2011, and there would be 3,000 until Turkey's EU accession or 1 January 2018. GCs did not want this later reduction in exchange for permanent stationing of 650 Turkish troops (in effect a bridgehead).

31. **Para 48** is misleading in many respects and designed to convey to any reader unaware of the hidden technicalities and "Catch 22s" in the property provisions that the changes favoured Greek Cypriot property owners and were designed to meet their concerns. In fact, the changes were designed to create the impression that all individuals were given back some of their property so that the property provisions would be more likely to withstand scrutiny by the European Court of Human Rights. In the same vein, para 48 depicts the changes as "providing that most Greek Cypriots would have some property reinstated in the Turkish Cypriot State…and all for returnees to four Karpas villages and the Maronite village of Kormakiti." This superficially rosy picture is deceptive. First, as regards homes, only persons who owned a dwelling at the time it was built or had lived in it for ten years were eligible for reinstatement. Second, current users' rights were significantly increased and their rights were to prevail over the entitlements of eligible dwelling-owners. Third, current users' rights would also prevail over the rights of returnees to the Karpas and Maronite villages, so "all" their property would not be returned.

32. The paragraph also misleads by implying that the total area of land returnable "would be roughly doubled," although the fine print is careful to refer to property "eligible to be reinstated". Under the earlier scheme, there had been a 10% "ceiling" on the amount of land eligible for reinstatement. In addition, all owners could enter into long leases, thus keeping their properties. In the result, the limit was much higher than the 10% "ceiling.". These proposals were removed in Annan V. Instead, owners could get up to one third of their property or one-third of its value whichever was the lower. Since 51% of the land area in the TCCS belongs to Greek Cypriots, they could in theory have been reinstated to up to 17% of the land. The drafter of para 48 in referring to rough doubling is casuistically comparing the 10% ceiling (which ignored the effect of owners' rights to keep leased property with this upper limit of 17%.) Yet the rate of reinstatement will not be 17%, but far lower for 3 reasons: the rights given to current users; the double constraints of value and area, whichever first applies: and a prohibition on reinstatement to institutions (companies and the Church of Cyprus except as regards religious sites). Eligibility in theory there is, but, because of other unmentioned provisions, the overall amount of land actually returnable will scarcely be increased, if at all.

33. There is yet another misleading statement: "Restrictions on the establishment of secondary residence by Cypriot citizens anywhere in Cyprus were removed". All this sentence means is that persons may rent a property for this purpose, but, elsewhere in the Plan, the TCCS authorities are given power to restrict the purchase of property.

34. Finally, a property and residency ceilings package was not "discussed with all parties at Bürgenstock" and certainly not with the Cypriot side. The side's property team sat around in Bürgenstock waiting to be called to a projected meeting, but the call never came, so no package was discussed as **para 48** wrongly alleges.

35. **Para. 49** misleadingly indicates that the alteration of permanent derogations from EU Law to 15 year derogations as regards rights to acquire property was to meet GC concerns. The GC side objected to any such limitation. Nor does the Plan remove all permanent derogations as asserted. In fact, it contains a permanent

derogation demanded by the TC side, whereby the TC side can act to ensure that no less than 2/3 of its Cypriot permanent residents speak Turkish as their mother tongue (see **para 51**).

36. **Para. 50** does not even mention the words "Turkish settlers". A complex mechanism requiring the agreement of TCs in order to stem the flow of Turkish settlers after Turkey joins the EU or 19 years was substituted for a permanent fixed small quota to which the GC side had agreed. The change was in response to a demand by Mr. Ziyal on 26 March. The new mechanism was that the Aliens Board, equally composed of members from each constituent state, would have to consult the European Commission. This would have to be done through the Federal Ministry of European Union Affairs. To give effect to any measures would then require regulations, which in turn would require approval by 9 Turkish Senators, (since all immigration regulations under Article 25.2.c of the UCR Constitution have to be approved in this way.) Turkish Cypriot politicians with an electorate consisting of a majority of Turkish settlers and their descendants would therefore have to vote for restricting Turkish immigration once Turkey joined the EU.

37. **Para. 52**. The GC side was never consulted about equal rotation of the first President and Vice President of the Presidential Council. Nor was it consulted about equal numbers of members of TC and GC Ministers with Turkish Cypriots holding crucial Ministries (such as Foreign Affairs and Defence with the full Turkish Army of occupation still present. This change is alleged to balance the fact that transitional government was a shorter period at GC request. Anything can retrospectively be said to be balancing anything.

38. **Para 53.** Ever since 1999 the GC side had said that it was unlawful for a settlement to interfere with individual rights and to strike out proceedings concerning property claims against Turkey. A device to satisfy the Court was substituted in the Plan since there were obvious doubts about the lawfulness of the Plan's property provision and the denial of access by individual victims to the Court. The new device was designed so as to be able to say to the Court that domestic remedies provided by the settlement must first be exhausted. In addition, the Co-Presidents were to write to the President of the Court and the Secretary-General of the Council of Europe to tell them of the Plan's provision of a domestic remedy. This stratagem was introduced upon demand by Turkey in order to protect her in cases now before the Court and is currently being relied up on by Turkey before the Court. The UN should not have been talking to the Court's judges and officials and interfering in pending cases before the Court in the interests of a State, or at all.

39. **Para 55** asserts that there are to be "symbolic force levels" of Turkish troops even after Turkey's EU accession. 650 Turkish troops is not "symbolic". They are sufficient in numbers to constitute a bridgehead (in UNFICYP language) – as they did in late 1963 and in 1974.

40. A slightly larger number of police was a Turkish Army demand (Cumhuriyet 7.1.04). The avowed purpose was to avoid the demilitarisation provisions and to keep members of the "Turkish Cypriot Security Forces" in action.

41. This is drafted to obscure the fact that the issue is "Turkish settlers". Mr. Pfirter told Bogazici University in Istanbul on 17 July 2003 that "the Plan does not foresee that anybody will be forced to leave" – his speech having outlined provisions indicating that 70,000 Turks could remain in Cyprus. On 15 March 2004, the Turkish Cypriot side, under Ambassador Ziyal's guidance, asked for a list of "50,000 persons in addition to their spouses and children" to be granted UCR citizenship. Since some 18,000 settlers, married to Turkish Cypriots, were entitled to citizenship under another provision, Turkey was in effect asking f4or 68,000 settler families to be granted citizenship. On the basis of 2 persons per family (2 x 50,000) plus the 18,000 spouses of Turkish Cypriots, Turkey was therefore admitting to the presence of at least 118,000 Turkish settlers. The Plan as "finalized" provided for: a list of 45,000 persons; the spouses of Cypriots (18,000 plus);

and 20,000 Turks as permanent residents, entitled in 4 years to UCR citizenship, thus providing for some 83,000 Turks to remain. In addition, 18,000 Turkish University staff and students would remain as residents, while, under the Turkish immigration quota, another 10,000 Turks could settle (in fact stay). Thus, under the 2004 version of the Plan, 111,000 Turkish settlers were either entitled to UCR citizenship or to residence. Accordingly, Mr. Pfirter's 17 July 2003 statement that nobody would be forced by the Plan to leave remained accurate, while para. 60 is deliberately misleading in suggesting that about half the "settlers" would have to leave Cyprus.

42. **Para. 61** implies that the Greek Cypriot side was not concerned in Cyprus about Turkey's claim to a right of unilateral intervention and the Treaty of Guarantee. In fact, in Cyprus on 8 March 2004, in its "Talking Points" on "Security-Ratification of the Treaty related to the coming into effect of the Foundation Agreement," the Greek Cypriot side rejected the Turkish Cypriot side's view (expressed in their papers) that there was a right of military intervention and insisted that the Treaty of Guarantee did not empower intervention. At Bürgenstock on 30 March, the Greek Cypriot side asked for clarification that the Treaty did not empower unilateral military intervention. Following the Bürgenstock meeting, the Government of Turkey circulated to the Turkish General National Assembly a paper asserting that the Plan gave Turkey "the right of intervention" either alone or together with the UK and Greece. Since clarifications were still being finalised, the Greek Cypriot side on 15 April 2004 insisted that the matter, which involved a jus cogens rule of international law, must be clarified. It gave the UN an Opinion by 19 of the world's leading jurists on the unlawfulness of unilateral intervention under the Treaty of Guarantee. The UN ignored this. The Report evades the issue by referring to a political factor – Cyprus's EU membership – as creating a "different context" from earlier years when Turkey militarily intervened in Cyprus (1964, 1967 and 1974), forgetting that Turkey is still intervening in Cyprus, being in military occupation of 36.4% of the Republic of Cyprus.

43. **Para. 62** purports to deal with limiting the vote in the referendum in the north to persons who were members of the Communities in 1963. This conceals the issue. It is really about Turkish settlers voting. The UN was given an Opinion by 18 of the world's leading jurists on the unlawfulness of letting settlers vote. The Greek Cypriot side had raised this issue continuously. Most notably, President Clerides raised it on 24 July 2000 at Geneva, when Mr de Soto gave his Preliminary Thoughts on a Plan for Cyprus. President Clerides also raised it many times thereafter, as did President Papadopoulos in letters of 28 February 2003, and 22 March and 25 March 2004. However, when the issue was yet again raised by President Papadopoulos as the referenda approached, the UN Secretariat briefed diplomats that, by raising "settlers," the Greek Cypriot side was attempting to torpedo the talks. The SG did not take up the President's request to discuss at Bürgenstock modalities easily and quickly to settle the issue. Nor did he ask for extension of his mandate, having doubted that it was within his role to deal with the matter. He merely stated that raising the issue was a major addition to the Plan which was before the Parties and that it undermined a fundamental parameter of his Plan. This approach of not touching fundamental parameters was inconsistent with his willingness to add the parameter of Community representation to the Senate and elections for the Senate (**para 51**) in order to satisfy Turkey. Reference in connection with the whole settler issue, (in particular to settlers voting) should be made to President Clerides' statement on 24 July 2000 at Geneva and to international law, under which the UN and its officials are supposed to operate – especially as the TCs, whom the Secretary-General applauded, were, many of them, settlers who knew that under the particular Plan they could stay in Cyprus. The settlers issue had repeatedly been raised and in detail long before the recent talks. President Clerides had on 24 July 2000 advanced a long argument depicting the illegality of settlers and the various relevant instruments (Fourth Geneva Convention etc.) He had concluded by saying: "...The Greek Cypriot side expects UN representatives who are assisting in the settlement of disputes to do so in the spirit of the Purposes in the UN Charter, that is, to see that the dispute is settled in conformity with principles of justice and principles of international law. I do not believe there should be silence about remedying these grave breaches of international law."

44. **Paras 65 and 66**. The Report indicates surprise at President Papadopoulos' views on the unwisdom of the Plan. Yet the UN knew that President Papadopoulos had constantly expressed doubts since his 27 February 2003 meeting with the Secretary-General, when the Plan was still subject to negotiation and had not been finalised in the way it was at Bürgenstock. By the end of March 2004 the Plan's balance was not acceptable, particularly in view of the Secretary-General's decision to finalize provisions which meant that large numbers of Turkish settlers would remain in Cyprus and politically control the TCCS. This possibility had always been rejected by the GC side. Without settlers as the dominant voting body in the northern part of Cyprus, the Plan would be different. Moreover, the active intervention and direction of Turkey had become ever more apparent, and she was in 2004 again, as in earlier years, explicitly claiming a right of unilateral military intervention. Above all, the Plan had not been so modified in the negotiations as to meet the conditions set out in February 2003 by President Papadopoulos for his support.

45. In **para 66** it is suggested that the GC side might have been given what it wanted had it complied with the Special Adviser's negotiating desires. This is fallacious, because the Secretariat and the two Permanent Members of the Council active in the talks process wanted Turkey to get what she desired. What the GC side wanted conflicted with that.

46. **Para. 71** is misleading. Cyprus does not have "State television". The Cyprus Broadcasting Corporation is operationally independent, although State-funded. President Papadopoulos wrote this to the Special Adviser on 21 April, when he told President Papadopoulos in his letter of 20 April 2004, that a journalist who had wished to interview him "had been instructed not to interview foreigners". The President also pointed to the fact that Cyprus had a lively and well-functioning democracy in which the media are virtually unfettered and that newspapers and the media were replete with analysis and commentaries on the UN Plan. Indeed, Mr de Soto was given much space in leading newspapers and his statements were reported on the news programs carried by the electronic media. **Para 71** is designed to cast doubt on the fair and free conduct of the referenda.

47. Even when it comes to the Report on technical aspects (Annex II) this is less than candid. It claims that three international judges "were selected in close consultation with the parties". This is false. The UN would not accept the Greek Cypriot side's nominations from a list of names of judges supplied by the UN. They rejected very distinguished human rights jurists and Mr Pfirter insisted on his own choice in one case while in the other case the lame excuse was used that there was no time to check that the nominated judge was still available, although the UN had been notified of the Greek Cypriot wish that he serve (his name having been put forward by the UN) a week before the UN decided whom to nominate. The decision was announced to the Greek Cypriot side without consultation with it, but with full consultation with and after having given a short list to the Turkish Cypriot side

A far more significant aspect is that the Report gives a misleading impression of improving functionality (**para 44**) and of indicating that the Plan represented a solid and workable economic basis for reunification of Cyprus (Annex II, para 9). The Report did not explain that important recommendations by the Technical Committee on Economic and Financial Aspects of Implementation (which had only been appointed at Greek Cypriot insistence) had either been changed or not included in the final, fifth Annan Plan and the accompanying Laws. Indicatively, the "Record of Recommendations of Technical Committee on Economic and Financial Aspects of implementation," submitted by the UN on 25 March 2004 to the two sides, had noted that "the Cyprus Pound mentioned in the Plan is the current Cyprus pound". This note was not included in the accompanying Central Bank Law attached to the fifth Annan Plan. Again, the Committee had recommended that in the future Monetary Policy Committee (ensuring currency stability) the Greek Cypriot side should have a majority of members, but the final version of the Plan, provided for equal representation of Greek Cypriots and Turkish Cypriots. Moreover, the Committee had recommended that the branch of the Central Bank in the TCCS should be closed one year after the entry into force of the Foundation Agreement, subject to the possibility of a contrary recommendation from a working group including IMF and EU experts. Yet the Plan left open the possibilities of maintaining the branch in the TCCS and of widening its responsibilities. Such a development could seriously undermine the effective exercise of monetary

policy. Even more seriously, the Committee had recommended that "An advisory Council should be created to serve as the main coordinating vehicle between the federal and constituent states to define a joint fiscal policy stance and contain and manage new borrowing by an Internal Stability Pact within the MSC". There were detailed provisions on the functions of this Macroeconomic Stability Council and on the borrowing limits of all levels of government, but the Plan and the accompanying Laws only referred to the possibility of setting up an MSC with an advisory role by a later federal Law. Yet again the Committee tackled the issues of prevention of harmful tax competition and taxation of commuters, whereas the fifth Plan and Laws were silent. Finally, the Committee had defined federal economic policy, whereas the Plan did not touch upon this major issue. All these Committee recommendations were agreed by the Committee's members, including the Turkish Cypriot experts, but Annex II, while it indicates that implementation of the Committee's recommendations would ensure a workable economic basis for a reunified Cyprus, is silent as to the departures from these recommendations by the Plan.

48. **Para. 76.** The non-utilization of the opportunity for frank negotiations was certainly not due to unwillingness by the Greek Cypriot side to negotiate. At Bürgenstock, it sat about in waiting, vainly hoping to be called to meetings, but the UN did not organize any meetings. Earlier in Nicosia, Mr. Denktash was in charge and would not negotiate.

49. **Para. 76.** The Plan was negatively presented by Mr. R. Denktash and Mr. S. Denktash, as well as by the President and some Greek Cypriot political figures. Likewise it was positively presented by politicians from both sides (Mr. Talat, Mr. Anastassiades, Mr Clerides and Mr Vassiliou). More GCs voted for the Plan than TCs (99,976 GCs to 77,646 TCs including settlers). "One side" cannot be singled out as having unfairly presented the Plan to the public.

50. **Para. 78.** Mr. Erdogan committed himself to being "one step ahead in the efforts for a solution". This is exactly so. It was a matter of P.R. tactics. There was no Turkish support for territorial concessions or for security changes which could have crowned the Secretary-General´s effort with success.

51. **Para. 83.** It was not "the solution itself" which was rejected. It was the "blueprint" which Mr. de Soto produced that was rejected. The benefits listed in para 83 were precisely why the Plan, as it evolved from Versions I, II and III, was kept as the basis for negotiations. It is why Version V will also be a basis for negotiations, although it will certainly require some important modifications.

52. **Para. 86.** Turkish Cypriots must, not just by word, or by a cross of the pen, also demonstrate their willingness to share. That is why they too must cooperate in measures to re-integrate their economy and develop it with joint participation by Greek Cypriots and the Government of Cyprus, which has sovereignty over all Cyprus, especially since governmental arrangements are matters within the domestic jurisdiction.

Concluding remarks

The GC side is grateful for the efforts and involvement of the SC and the good offices of the SG. It remains committed to exerting all efforts that may be needed to achieve a final solution and reunification of the Island in a bi-communal and bi-zonal federation. The recent democratic outcome of the Referendum, conducted in accordance with the Plan in the GC community, is in no way a rejection of the solution itself (as the drafters of the Report seem to infer in a sweeping statement in **para. 83**) but only marks voters protest in relation to the specific plan as it emerged from the Bürgenstock meetings.